

No. 10,345

IN THE

19
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

FARM PRODUCTS Co., a corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

PETITION FOR REHEARING.

CHARLES H. CARR,

United States Attorney,

WM. H. WORTHINGTON,

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Attorneys for Appellee.

FILED

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vs.

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PETITION FOR REHEARING.

*To the Honorable United States Circuit Court and the
Judges Thereof:*

Comes now the United States of America, appellee in the above-entitled cause, and presents this its petition for a rehearing of the above-entitled cause, and presents this its petition for a rehearing of the above-entitled cause, and in support thereof most respectfully shows:

I.

That the omission of the contract between the Farm Securities Administration and the Farm Products Co. from the record on appeal herein was not an inadvertence. This because this case does not involve any rights or obligations of the United States, nor could any contract made by the United States with the Farm Products Co. be an essential

part of the record on appeal as it could not be determinative nor throw any light upon whether the Farm Products Co. came within Section 75 of the Bankruptcy Act.

II.

This appeal involves the sole question of whether the appellant, Farm Products Co., can avail itself of the provisions of Section 75 of the Bankruptcy Act.

III.

The admissions of the appellant, Farm Products Co., through its president, Fred Mansur, as contained in the record before this court, sets forth the entire facts upon which appellant and appellee have conceded are determinative of the question here involved.

IV.

The statement in the opinion of the Circuit Court, "In the Narrative Statement of Testimony Before Conciliation Commissioner, which is a part of the record before the District Court upon review," is not correct, as the District Court had before it not the narrative statement but the reporter's transcript of the hearing. The narrative statement was not prepared until after the judgment of the District Court affirming the Commissioner's Order.

V.

The opinion of the Circuit Court in stating that no affidavits were certified to the District Court assumes a negative fact which can only be based upon the fact that the record before the Circuit Court did not affirmatively show that such affidavits were before the District Court, *whereas in fact the affidavits were certified to the District Court prior to its decision affirming the Commissioner's Order*

and were before it at the time of such affirmance. The record fails to disclose the certification of such affidavits because appellee and appellant have, at all times since the giving of oral testimony before the Commissioner by Mansur, considered said affidavits as being nothing more than opinion evidence, and therefore, irrelevant, or at the most, cumulative.

Wherefore, upon the foregoing grounds, it is respectfully urged that this petition for a rehearing be granted, and that the Order of this court in the above-entitled matter dated the 2d of June, 1943, be, upon further consideration, reversed, or that the appeal herein be dismissed.

Respectfully submitted,

CHARLES H. CARR,

United States Attorney,

WM. H. WORTHINGTON,

Assistant U. S. Attorney,

Attorneys for Appellee.

Certificate of Counsel.

I, Wm. W. Worthington, Assistant United States Attorney, do hereby certify that the foregoing petition for rehearing of this cause is presented in good faith, and not for delay.

WM. W. WORTHINGTON.